

Exhibit 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN WILEY & SONS, INC., CENGAGE
LEARNING, INC., and PEARSON
EDUCATION, INC.,

Plaintiffs,

Case No. 13 cv 0816 (WHP)(GWG)

v.

BOOK DOG BOOKS, LLC, and PHILIP
SMYRES,

Defendants.

DECLARATION OF MATTHEW J. OPPENHEIM

I, Matthew J. Oppenheim hereby declare under penalty of perjury that the following statements are true and correct to the best of my personal knowledge and belief:

1. I am a member of this bar and a partner of Oppenheim + Zebrak, LLP. I represent Plaintiffs in this case and submit this Declaration in support Plaintiffs' Application for Fees.
2. At the hearing on February 25, 2014, the Court granted Plaintiffs leave to submit a detailed fee application setting forth the specific expenses that Plaintiffs believe Defendants should pay for improperly cancelling the deposition of Defendant Philip Smyres the evening before it was scheduled to proceed.
3. The facts leading up to, and including, Defendants' cancelation of the properly noticed deposition of Philip Smyres, scheduled for February 20, 2014, are as follows:
 - a. Defendant Smyres' deposition began on November 20, 2013. At the end of that day, Defendants agreed to continue his deposition for another day.

Defendants did so because, among other reasons, during the course of the deposition it became apparent that their document production, which they later supplemented, was clearly inadequate and deprived Plaintiffs of the opportunity to conduct a meaningful deposition of Defendant Smyres.

- b. The parties initially planned to re-convene Mr. Smyres' deposition on December 4, 2013. On December 2, 2013, however, Defendants unilaterally cancelled that deposition date. (Defendants reimbursed Plaintiffs for the cost of their lost airfare for the last minute cancellation.) Plaintiffs then sought to conduct the deposition the week of December 9, 2013, but were again told that was not possible. Finally, the parties agreed that the deposition would occur in January in New York. Unfortunately, that never happened either.
- c. Finally, on January 29, 2014, the parties agreed to take the depositions of Thomas Cahill and Philip Smyres on February 19th and 20th, respectively, in New York.
- d. At the conclusion of the deposition of Mr. Cahill, at roughly 6:30 pm on February 19, 2014, counsel for Defendants, Ms. Miller, asked Plaintiffs whether they were going to make witnesses available for depositions the following week. Plaintiffs responded, as we had repeatedly explained by email, that we would make the witnesses available only once we knew on what 30(b)(6) topics they were going to be asked to testify. Dissatisfied with Plaintiffs' response, Ms. Miller announced that Mr. Smyres was not

going to appear for his deposition if Plaintiffs were not going to make their witnesses available the following week.

- e. Undersigned counsel immediately informed Ms. Miller that: Mr. Smyres had a legal obligation to show up the next day for the deposition that had long been scheduled; Defendants are not permitted to cancel a pending deposition on the grounds that they believe they are entitled to discovery from Plaintiffs; Defendants should carefully consider the issue and the potential ramifications, including that Plaintiffs would seek sanctions if they did not appear; and Plaintiffs would be waiting for them the next morning, ready to proceed with the deposition. Ms. Miller departed the conference room without further response. At no time later in the evening did Defendants email or call Plaintiffs' counsel to inform us as to how they intended to proceed.
- f. The next morning, Plaintiffs' counsel, consisting of myself and Julie C. Chen, and the Court reporter showed up and appeared on the record at 9:30 am, the time of the scheduled deposition. We waited until 9:55 am for Mr. Smyres to appear. When he did not, we noted Mr. Smyres' failure to appear on the record and adjourned the deposition.

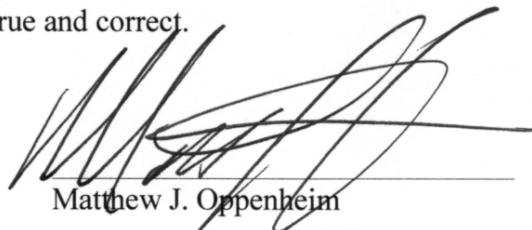
4. Plaintiffs therefore seek to have Defendants pay the following fees totaling \$4,542.30:

- a. Hotel Room Fees of \$705.80. The two hotel rooms could not be cancelled for that night in time for a refund. (Receipts attached as Exhibit A).
- b. Train Expenses of \$934.00. (Receipts attached as Exhibit A).

- c. Court Reporter Fees of \$262.50. (Invoice attached as Exhibit 1).
- d. Attorneys' Fees of \$2,640 for a portion of the expense of filing the Motion to Compel and this Fee Application. This covers 5 hours of undersigned counsel's time, as well as 3 hours of Julie C. Chen's time, for: drafting and filing the February 20, 2014 letter seeking to compel Mr. Smyres' deposition, reviewing Defendants' February 24, 2014 response, preparing for and attending the February 25, 2014 hearing, and preparing this Fee Application. Actual time records would show that the time spent was in excess of 15 hours. For purposes of this matter, undersigned counsel is billing his clients at \$435/hour with a 20% discount or \$348/hour. Julie C. Chen's hourly rate is \$375/hour with a 20% discount or \$300/hour. The billing rates are well below market rates. (Copies of billing records can be made available should the Court so desire to review them).

5. Plaintiffs attach hereto, as Exhibit A, documentation supporting the expenses incurred and set forth herein.

I declare under penalty of perjury that the foregoing is true and correct.



Matthew J. Oppenheim

Executed February 28, 2014
in Washington, DC

Exhibit A

INVOICE

David Feldman Worldwide, Inc.
450 Seventh Avenue
Suite 500
New York, NY 10123
Phone:212-705-8585 Fax:646-304-1713

Matthew Oppenheim, Esq.
Oppenheim & Zebrak Law, LLP
4400 Jennifer Street NW
Washington, DC 20015

Invoice No.	Invoice Date	Job No.		
100532	2/26/2014	33305		
Job Date	Case No.			
2/20/2014				
Case Name				
John Wiley & Sons, Inc., et al. v. Book Dog Books, LLC and Philip Smyres				
Payment Terms				
Net 30, Interest at 1.5% / month				

Philip Smyres

Same Day Cancellation

250.00

TOTAL DUE >>> **\$250.00**
AFTER 3/28/2014 PAY \$262.50

THANK YOU FOR YOUR BUSINESS

Payment Not Contingent On Client Reimbursement

You can view your invoices and payment history at our website www.David-Feldman.com.
Call us for more information on this function.

IMPORTANT, NEW REMITTANCE ADDRESS.

Please note this address is to be used for all current and/or past invoices or statements you have received by mail and/or email.

Tax ID: 13-4091601*Please detach bottom portion and return with payment.*

Matthew Oppenheim, Esq.
Oppenheim & Zebrak Law, LLP
4400 Jennifer Street NW
Washington, DC 20015

Invoice No. : 100532
Invoice Date : 2/26/2014
Total Due : \$250.00
AFTER 3/28/2014 PAY \$262.50

Remit To: **David Feldman Worldwide, Inc.**
405 Park Avenue, 16th Floor
New York, NY 10022

Job No. : 33305
BU ID : DFW CR
Case No. :
Case Name : John Wiley & Sons, Inc., et al. v. Book Dog Books, LLC and Philip Smyres

LE PARKER MERIDIEN
NEW YORK

Matthew Oppenheim
7304 River Falls Dr
Potomac MD 20854
US

INVOICE

Res # 811065487
Arrival 02-18-14
Departure 02-20-14
Room No. 1016
Folio No. 1175172
Booking ID
Page No. 1 of 1

Date	Description	Charges	Credits
02-18-14	Default Package Trans Code	295.00	
02-18-14	Room State Sales Tax	47.01	
02-18-14	Facility Fee	10.00	
02-18-14	Facility Fee Tax	0.89	
02-19-14	Default Package Trans Code	295.00	
02-19-14	Room State Sales Tax	47.01	
02-19-14	Facility Fee	10.00	
02-19-14	Facility Fee Tax	0.89	
02-20-14	American Express		705.80
	XXXXXXXXXXXX3001 XX/XX		
<hr/>		Total:	705.80
<hr/>		Balance:	0.00 USD

If you disagree with or dispute your billing statement, written notice, along with a copy of the billing statement, must be sent to the attention of the Credit Manager, within sixty (60) days from the date of the billing statement to the address below. Within ninety (90) days of receipt of such dispute (and prior to taking any action to collect the amount believed to be in error), we will: (i) make the appropriate corrections or (ii) send a written notice explaining as to why the amount was correctly billed.

NOTE: Aside from the disputed amount, you are required to make payment towards the undisputed amount(s) within thirty (30) days from the date of the billing statement. Past due balances are subject to a finance charge of 1.5% per month (18% APR).



Matthew Oppenheim
7304 River Falls Dr
Potomac MD 20854
US

INVOICE

Res # 331065504
Arrival 02-18-14
Departure 02-20-14
Room No. 2603
Folio No. 1175173
Booking ID
Page No. 1 of 1

Date	Description	Charges	Credits
02-18-14	Default Package Trans Code	295.00	
02-18-14	Room State Sales Tax	47.01	
02-18-14	Facility Fee	10.00	
02-18-14	Facility Fee Tax	0.89	
02-19-14	Default Package Trans Code	295.00	
02-19-14	Room State Sales Tax	47.01	
02-19-14	Facility Fee	10.00	
02-19-14	Facility Fee Tax	0.89	
02-20-14	American Express		705.80
	XXXXXXXXXXXX3001 XX/XX		
<hr/>		Total:	705.80
<hr/>		Balance:	0.00 USD

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Friday, February 28, 2014 4:27:03 PM Eastern Standard Time

Subject: Amtrak: eTicket and Receipt for Your 02/18/2014 Trip - MATTHEW OPPENHEIM
Date: Monday, February 17, 2014 4:56:05 PM Eastern Standard Time
From: etickets@amtrak.com
To: Matt Oppenheim

SALES RECEIPT

Purchased: 02/17/2014 12:58 PM PT

Merchant ID 00687

Modified: 02/17/2014 1:56 PM PT

60 Massachusetts Avenue

Thank you for your purchase.

Washington, DC 20002

800-USA-RAIL

Amtrak.com

1. Retain this receipt for your records.
2. Print the attached eTicket and carry during your trip.

Reservation Number - 869341

WASHINGTON, DC - NEW YORK PENN, NY (Round-Trip)

FEBRUARY 17, 2014

Billing Information

MATTHEW OPPENHEIM
4400 JENIFER ST NW
STE 250
WASHINGTON, DC 20015-

American Express ending in 3001 (Purchase)
Authorization Code 262314

Total \$54.00

Change Summary - Ticket Number 0480687566202

Original Amount Paid	\$464.00
Revised Trip Details	
Train 2170: WASHINGTON, DC - NEW YORK (PENN STATION), NY	
Depart 3:00 PM, Tuesday, February 18, 2014	

1 ACELA EXPRESS BUSINESS CL SEAT	\$259.00
Ticket Terms & Conditions	
ACELA EXPRESS SERVICE, NO PARTIAL REFUND IF USED ON OTHER SERVICE	
Subtotal	\$259.00
Train 2171: NEW YORK (PENN STATION), NY - WASHINGTON, DC	
Depart 7:00 PM, Thursday, February 20, 2014	
1 ACELA EXPRESS BUSINESS CL SEAT	\$259.00
Ticket Terms & Conditions	
ACELA EXPRESS SERVICE, NO PARTIAL REFUND IF USED ON OTHER SERVICE	
Subtotal	\$259.00
Revised Fare	\$518.00
Total	\$54.00

Passengers

Matthew Oppenheim

Important Information

- Tickets are non-transferrable.
- Changes to your itinerary may affect your fare.
- Refund and exchange restrictions and penalties for failure to cancel unwanted travel may apply. If your travel plans change, call us before departure to change your reservation. If you do not board your train, your entire reservation from that point will be canceled. If you board a different train without notifying us, you will have to pay for it separately; the conductor cannot apply the money paid for your prior reservation. For all travel on or after March 1, 2014, for most Acela Express Business class reservations and Reserved Coach class reservations, you must cancel your reservation at least 24 hours prior to the train's departure in order to be eligible for a full refund. If the reservation is canceled within 24 hours of departure, a refund fee will apply. If the reservation is not canceled prior to scheduled departure ("no show"), the entire amount paid for the reservation will be forfeited. See the refund/exchange policy at [Amtrak.com/refund](#).
- Summary of Conditions of Contract: Ticket valid for carriage or refund (subject to the refund rules of the fare purchased) for twelve months after date of issue unless otherwise specified. Amtrak tickets may only be sold or issued by Amtrak or an authorized travel agent/tour operator. Tickets sold or issued by an unauthorized third party will be voided by Amtrak. This ticket is a contract of carriage between Amtrak and the ticket holder, which is subject to specific terms and conditions, which are available for inspection at Amtrak ticket counters, on the Amtrak website at [Amtrak.com/conditionsofcontract](#), or by calling 1-800-USA-RAIL. Tickets sold for non-Amtrak service are subject to the tariffs of the providing carrier.
- Questions? Contact us online at [Amtrak.com/contact](#) or call 1-800-USA-RAIL (1-800-872-7245) or TDD/TTY (1-800-523-6590).

Subject: Fwd: Amtrak: eTicket and Receipt for Your 02/18/2014 Trip - JULIE CHEN

Date: Friday, February 28, 2014 at 4:57:52 PM Eastern Standard Time

From: Julie Chen

To: Susan Seutter

This is orig but addl fee added when we switched trains coming home. See receipt on my desk

Begin forwarded message:

From: "etickets@amtrak.com" <etickets@amtrak.com>

Date: February 17, 2014 at 4:58:25 PM EST

To: "CLOCKERCHEN@YAHOO.COM" <CLOCKERCHEN@YAHOO.COM>, Julie Chen <julie@oandzlaw.com>

Subject: Amtrak: eTicket and Receipt for Your 02/18/2014 Trip - JULIE CHEN

SALES RECEIPT

Purchased: 02/17/2014 1:58 PM PT Thank you for your purchase.

1. Retain this receipt for your records.
2. Print the attached eTicket and carry during your trip.

Merchant ID 0064560 Massachusetts Avenue Washington, DC 20002800-USA-RAILAmtrak.com

Reservation Number - 86A64FBWI AIRPORT STA, MD - NEW YORK PENN, NY (Round-Trip)FEBRUARY 17, 2014

Billing Information

JULIE CHEN4400 JENIFER ST NW WASHINGTON, DC 20015

American Express ending in 1039 (Purchase)Authorization Code 270556

Total \$470.00

Purchase Summary - Ticket Number 0480645570247

Train 2170: BWI THURGOOD MARSHALL AIRPORT STATION, MD - NEW YORK (PENN STATION), NY Depart 3:21 PM, Tuesday, February 18, 2014

1 ACELA EXPRESS BUSINESS CL SEAT

\$248.00

Ticket Terms & Conditions ACELA EXPRESS SERVICE, NO PARTIAL REFUND IF USED ON OTHER SERVICE

Subtotal

\$248.00

Train 2171: NEW YORK (PENN STATION), NY - BWI THURGOOD MARSHALL AIRPORT STATION, MD Depart 7:00 PM, Thursday, February 20, 2014

1 ACELA EXPRESS BUSINESS CL SEAT

\$222.00

Ticket Terms & Conditions ACELA EXPRESS SERVICE, NO PARTIAL REFUND IF USED ON OTHER SERVICE

Subtotal

\$222.00

Total Charged by Amtrak

\$470.00

Passengers

Julie Chen

Important Information

- Tickets are non-transferable.
- Changes to your itinerary may affect your fare.
- Refund and exchange restrictions and penalties for failure to cancel unwanted travel may apply. If your

travel plans change, call us before departure to change your reservation. If you do not board your train, your entire reservation from that point will be canceled. If you board a different train without notifying us, you will have to pay for it separately; the conductor cannot apply the money paid for your prior reservation. For all travel on or after March 1, 2014, for most Acela Express Business class reservations and Reserved Coach class reservations, you must cancel your reservation at least 24 hours prior to the train's departure in order to be eligible for a full refund. If the reservation is canceled within 24 hours of departure, a refund fee will apply. If the reservation is not canceled prior to scheduled departure ("no show"), the entire amount paid for the reservation will be forfeited. See the refund/exchange policy at [Amtrak.com/refund](#).

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- Questions? Contact us online at [Amtrak.com/contact](#) or call 1-800-USA-RAIL (1-800-872-7245) or TDD/TTY (1-800-523-6590).